STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY
89 KINGS HIGHWAY
DOVER, DELAWARE 19901
PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order No. 2017-WH-0002

RE: Approving Final Regulations, *7 DE Admin. Code 1305, Universal Recycling Regulations*

Date of Issuance: January 17, 2017
Effective Date of Regulation Adoption: February 21, 2017

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department") pursuant to *7 Del. C. §§6006, 6010, 29 Del. C. §§10101 et seq.* and any other relevant authority, the Department issues the following findings of fact, reasons and conclusions as an Order of the Secretary to adopt proposed regulations as final regulations.

BACKGROUND AND PROCEDURAL HISTORY

This Order considers proposed regulations, *Universal Recycling Regulations, 7 DE Admin. Code 1305* ("Regulation 1305"), which will assist the Department in administering its duties under the Universal Recycling Law ("URL"), *Subchapter III of 7 Del. C. §§6051-59.* The URL sets recycling goals by 2020, which will require increased recycling, particularly from the commercial and multi-family residential sectors.

The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS") is responsible for the Department's regulation of solid waste recycling. The SHWMS obtained the Department's approval to

Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which established the record, recommended findings and provided reasons in support of the recommended approval of the proposed Regulation 1305 without any change.

FINDINGS OF FACT

The Department finds that the record, as established in the Report, supports adopting proposed Regulation 1305 as Final Regulations attached hereto in Appendix A. The Final Regulations are the same as proposed Regulation 1305.

The Final Regulations will allow the Department to improve recycling by providing definitions for "waste service provider," "commercial sector," "property managers," and "marketplace." Theses definitions will improve the regulation of recycling and set forth the responsibilities and duties for waste service providers, property managers, and the commercial sector.

The Final Regulations' responsibilities and duties for waste service providers prohibit them from intentionally commingling source-separated recyclables with other waste. The Department recognizes that waste service providers, often called "haulers," contract with customers to collect trash and recyclables, and that their customers may often place trash into the haulers containers that are to receive only recyclable materials. The Final Regulations require that haulers should not commingle sorted recyclable materials with trash. The Final Regulations prohibit any intentional commingling, and places responsibility on the haulers to take steps to end commingling by their customers. The haulers are in the best position to enforce this prohibition in its contracts with customers, in educating and providing notices to customers, and in providing conveniently located and sufficient containers that will encourage their proper use for recycling.

Report, the URL provides a procedure to seek relief of the location requirements from the Department based upon the submission of a written justification and the Department's approval of it.

The Final Regulations also regulate property managers in single or multi-family residential sectors by requiring that their tenants have single stream recycling services. The property managers can make single stream recycling available to their tenants by contracting with a hauler. The Department finds it reasonable to regulate property managers, which includes owners and their surrogates. Property managers determine where their complex's waste and recycling containers should be located. In addition, property managers may be able to establish rules governing the conduct of their tenants, which can include rules for proper use of recycling and trash containers to prohibit commingling. The property managers also are appropriate to communicate with tenants, and the URL and the Final Regulations require at least annual notices to tenants. The Department anticipates that more frequent notices may be required to get the users properly recycling, and, as noted in the comments, property managers can send notices when a tenant moves in and thereafter until a tenant properly recycles.

The Final Regulations also set forth the commercial sector's duties to participate in the comprehensive recycling program and to report on its recycling, which the Department can review to determine if sufficient under the URL and the Final Regulations.

The members of the public who attended the public hearing were from the regulated community of haulers and one representative from a recycling center. There were comments on the proposed requirement to locate recycling containers in multi-family residential complexes. The SHWMS TRM and the Report fully address these

Regulations as reasonable and consistent with the law, which requires increased recycling to meet the law's goals. The Department hereby approves the Final Regulations and directs that they be sent to the *Delaware Register of Regulations* for publication in the next available issue with an effective date eleven days after their publication. The Report is hereby adopted to the extent it is consistent with this Order.

The adoption of these Final Regulations will allow Delaware to (1) provide greater environmental protection and reduce human health risks associated with solid waste disposal at landfills; (2) allow the Department to administer the recycling law with regulations designed to promote more recycling, particularly by those who live in multi-family residential apartment complexes and commercial sectors that share with others containers for waste disposal and recycling; and (3) provide notice and reporting requirements that will improve the understanding of recycling and to evaluate the implementation of the Final Regulations.

In conclusion, the Department enters the following ordering paragraphs:

1. Pursuant to 7 *Del. C. Chapter 6010,* the Department has the statutory authority to adopt this Order approving the Final Regulations to promote recycling consistent with 7 Del. C. §§6051-59;

2. The Department considered the record developed to support the Final Regulations, as established in the Report, and finds that it supports the adoption of the Final Regulations as a reasonable method to increase recycling to meet the goals set forth in 7 *Del. C. 6056*;

3. The Department provided proper public notices of the proposed regulations and of the public hearing, and the Department properly allowed the public the

8. The Department shall submit this Order approving the Final Regulations as *7 DE Admin. Code 1305*: *Universal Recycling Regulations*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and the Department's regulations require and as the Department determines is appropriate.

David S. Small
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable David S. Small
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Regulation, 7 DE Admin. Code 1305, Universal Recycling Regulations.**

DATE: January 12, 2017

I. PROCEDURAL HISTORY

This Hearing Officer's Report ("Report") is submitted to the Secretary of the Department of Natural Resources and Environmental Control ("Department") for his final decision on the Department's proposed regulations, *7 DE Admin. Code 1305 Universal Recycling Regulations* ("Regulation 1305").

On April 18, 2016, the Department approved the Division of Solid and Hazardous Waste Substances, Solid and Hazardous Waste Management Section's ("SHWMS") requested Start Action Notice 2016-03, which began regulatory development process.

The SHWMS drafted proposed Regulation 1305 and sent it to the members of the Recycling Public Advisory Council ("RPAC").[1]

On September 6, 7 and 14, 2016, SHWMS held public workshops in Lewes, Bear and Dover, respectively. At the September 21, 2016 RPAC meeting, SHWMS' Don Long provided the following summary of the public workshops as reflected in the meeting minutes:

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[1] The RPAC reviews the Department's recycling efforts as part of its responsibility to "[a]dvise the Department…on all aspects of recycling." *7 Del. C. 6058(c)*. The Governor appoints RPAC's members.

> **Universal Recycling Regulations** Don reported that the public workshops were held in Dover, Lewes and Bear, and that the workshops were positive and that constructive comments were made and are under review. The two main comments that were mentioned by the public at the workshops were 1) utilities companies and hospitality venues should be included in the definition of "commercial sector" and 2) clarifying a requirement in a situation where the property manager is also the waste services provider. The next step will be to schedule a public hearing probably in November.

The SHWMS finalized proposed Regulation 1305 and the Regulatory Flexibility Analysis and Impact Statement Form and submitted them to the *Delaware Register of Regulations*. The *Delaware Register of Regulations* published the proposed Regulation 1305 and a public notice of a November 21, 2016 public hearing in its November 1, 2016 issue. On October 30, 2016, SHWMS also had public notices of the proposed Regulation 1305 and the public hearing published in *The News Journa*l and the *Delaware State News*.

I presided over the public hearing at the Department's offices at 89 Kings Highway, Dover. Approximately ten persons attended the public hearing, and three persons provided comments. The Department kept the public comment period open until December 9, 2016.

Following the close of the public comment period, I requested technical assistance from the SHWMS, which provided me its Technical Response Memorandum ("TRM") that addressed the public comments and recommended that the Department adopt proposed Regulation 1305 as a final regulation.

II. SUMMARY OF THE RECORD

The record includes the following: 1) the verbatim transcript from the November 21, 2016 public hearing, 2) the documents marked as exhibits that include all the public comments, and 3) any document cited in this Report, including the SHWMS TRM attached to this Report.

The record from the public hearing includes SHWMS' representative Don Long, Planner, providing background on the development of proposed Regulation 1305. He indicated that that the proposed Regulation 1305 was the result of extensive internal development lasting over a year. He indicated that the RPAC reviewed proposed Regulation 1305 and that the SHWMS held public workshops in Lewes, Bear and Dover. He indicated that the purpose of proposed Regulation 1305 was to ensure the proper programs and collection services for recyclable materials are implemented, maintained and consistent with the law. He said that proposed Regulation 1305 would divert the collected recyclable materials from disposal at landfills or incinerators. He stated that proposed Regulation 1305 requires that proper processing of recyclables entering the marketplace. He added that the proposed Regulation 1305 will effectively measure recycling and will divert the maximum possible waste from Delaware's landfills.

The following persons spoke at the hearing:

1. Bob Ziegler indicated that he was with Public Services and also was the chairman of the Delaware Chapter of National Waste and Recycling Association. He said his Association was not opposed to proposed Regulation 1305 and in fact considered it a good thing. He commented on Section 4.1.1 , which may cause haulers to be vulnerable to enforcement actions, and asked how the Department will determine if source-separated recyclables are commingled with other solid waste. He said that haulers should not he held responsible for what is in the recycling containers that they pick up. He said that the Department should not require haulers to inspect every recyclable container before they pick it up. He also commented on Section 4.1.3's requirement that a hauler must provide multi-family residential customers with single stream recyclables collection containers that are located adjacent, or as close as possible, to the complex's waste disposal containers so that recycling access is at least as convenient as waste disposal. He noted that apartment complexes are historically the most or second most prone type of customers that have their recycling containers contaminated with solid waste. He said by adding more containers next to the trash cans will result in more contaminated recycling containers. He noted that the cost of a container was $500 to $1,000 and that haulers would pass the additional cost for more containers along to the apartment complex. He suggested educating the apartment complexes was better than throwing more capital into recycling cans to be contaminated. He noted that the proposed Regulation 1305 was looking at a 1 to 1

ratio whereas now haulers provide 1 recycling container ratio to 3-4 trash containers. At the end of the public hearing, he commented that multi-family residential complexes may have multiple locations for their trash containers and may seek loopholes to any requirement that they have more recycling cans. He also indicated his company deals with contamination by charging the customers extra, but that any addition charge often causes customers to change haulers.

2. Kurt Pilarski spoke and indicated he was the Senior District Manager for Waste Management. He wanted clarification that Section 4.1.3 does not require a 1 to 1 ratio of recycling containers to trash containers. Mr. Long confirmed that proposed Regulation 1305 did not prescribe any ratio. Mr. Pilarski wanted to know who determines the appropriate number of recyclable containers that should be provided to multi-family complexes that may have 10 trash containers. He also commented on the problems with adding recyclable containers in cities where space to locate containers is limited. He also raised the issue of loading contaminated containers of recyclables without knowing that the recyclable containers were contaminated until a truck unloads at a recycling center.

3. Bob Anderson identified himself as with Re-Community Recycling. He agreed that apartment complexes created the biggest contamination problems and adding containers will only add to the contamination. He indicated his company was one of the largest recycling facilities in Delaware and charged haulers a $250 contamination surcharge for contaminated loads even if the real offender is the hauler's customers such as a commercial entity. He described that transient tenants deposit trash into recycling containers. He stated that these tenants are not as committed to recycling as single-family homeowners. He indicated the commercial sector's retail stores and apartment complexes are locations with trash and recycling containers that anyone easily can use to deposit trash in recycling containers, including illegal dumping by those not authorized to use the containers. He indicated the biggest problem is educating the users of collection services, and making property managers responsible for proper use of recycling containers. He said property managers' duties include enforcing other tenant rules such as parking spaces, not putting stuff outside such as having grills, and other controls over tenants. He stated that haulers who try to enforce the rules on recycling would cause their apartment complex customers to seek another hauler. Mr. Long replied that the proposed Regulation 1305 does include education in Section 4.2.3. Mr. Anderson indicated that an annual notice is not going to fix the contamination issue at a complex, but making the property managers responsible for more notices, such as when tenants first occupy their residences and periodically thereafter, which he considered would improve recycling by reinforcing the instructions.

The record includes the following documents marked as exhibits:

DNREC Ex. 1- the Start Action Notice 2016-03 signed by Secretary Small;

DNREC Ex. 2- the November 1, 2016 *Delaware Register of Regulations*' publication of the proposed regulations and the public notice of the public hearing;
DNREC Ex. 3-the October 30, 2016 publication of public notices in the *News Journal* and the *Delaware State News*;
DNREC Ex. 4-the RPAC July 27, 2016 meeting minutes;
DNREC Ex.5- The public notices of the public workshops held in Lewes, Bear and Dover on September 6, 7 and 14, 2016;
DNREC EX. 6-the Regulatory Flexibility Analysis and Regulatory Impact Statement;
DNREC Ex. 7-the RPAC annual reports on recycling issued 2012, 2013, 2014, and 2015.

I consider that the record, as established above, is complete and supports a final decision based on the following findings of fact, reasons and conclusions that recommend adopting proposed Regulation 1305 as final Regulation 1305.

III. FINDINGS OF FACT

As the above procedural history and the record indicates, the SHWMS properly followed the Department's procedures for developing a proposed regulation, including publications of public notices of the proposed regulation in two newspapers and in the *Delaware Register of Regulations*. In addition, SHWMS properly prepared the Regulatory Flexibility Act analysis for submission of the proposed regulation to the *Delaware Register of Regulations*. I find that the Department properly provided the public with the opportunity to comment on proposed Regulation 1305 during a public comment period that commenced November 1, 2016 and ended December 9, 2016 and included a November 21, 2016 public hearing.

The SHWMS also presented the draft of proposed Regulation 1305 to the RPAC for its review and held informal public workshops in each of the three counties in order to educate the public and to solicit comments for drafting the proposed Regulation 1305.

I find that the proposed Regulation 1305 is reasonable and fully supported in the record. The proposed Regulation 1305 is to administer the Universal Recycling Law ("URL"), as codified at *7 Del. C. Ch. 60 Subchapter III.*

The proposed Regulation 1305 in Section 1.0 sets forth the declaration of intent, which includes the implementation and maintenance of proper collection services for recyclable materials consistent with the URL, which established recycling goals to divert 72% of solid waste disposal by January 1, 2015 and 85% by January 1, 2020. The 14th Annual Recycling Report submitted by RPAC in November 2014 indicated recycling rate of that met the initial goal, but require additional recycling possible by the proposed Regulation 1305 to meet the 2020 goal.

Section 2.0 sets forth the scope and applicability of the proposed Regulation 1305, which will regulate: 1) all persons providing municipal solid waste collection service, 2) all persons engaged in the collection, aggregation, transportation, processing, or marketing of source-separated recyclable materials. 3) commercial sector entities that are required to participate in the URL's comprehensive recycling; and 4) all property managers that are waste service providers in the single and multi-family residential and the commercial sectors.

Section 3.0 of proposed Regulation 1305 provides additional definitions of "commercial sector," "marketplace," "property manager," and "waste service provider."

Section 4.0 of proposed Regulation 1305 sets forth the responsibilities for waste service providers, property managers and the commercial sector. Section 4.1 set forth the responsibilities of waste service providers ("Haulers"), which are to: 1) not commingle source separated recyclables with other solid waste; 2) provide at least an annual notice to

customers of the availability of and instructions for single stream recycling; and 3) provide multi-family residential customers with single stream recyclables collection containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, so that recycling access is at least as convenient as waste disposal. The last responsibility resulted in the most public comments.

In Section 4.2 of proposed Regulation 1305 sets forth the property managers' responsibilities, which are: 1) ensuring single stream recycling services are available for tenants in single or multi-family residential sectors; 2) ensuring that single stream recycling services are available for tenants in the commercial sector in a manner that is convenient and cost effective; 3) provide at least annual notification to their tenants that single stream recycling services will be provided and instructions on participation; and 4) granting the authority to require tenants to source separate their single stream recyclable materials and place them in the appropriate recycling collection container.

Section 4.3 of proposed Regulation 1305 sets forth the commercial sector's responsibilities, which are to participate in a comprehensive recycling program that will include: 1) performing an annual review of the solid waste generated and maintain records of the review for three years; 2) identify recyclables in the solid waste; 3) keep recyclables separate from the solid waste stream; and 6) ensure that recyclables enter the marketplace or are collected for recycling. Section 4.4 provides that the Department may determine that a commercial sector entity should be the subject of enforcement and penalties based upon finding that it is not participating in a comprehensive recycling program if it has no recycling program or it regularly has a significant portion of recyclables in its waste stream that are not source separated.

Section 4.5 of proposed Regulation 1305 reflects *7 Del. C. §6053(5)*'s exemption from waste service provides persons who transport solid waste and recyclables from their own property.

The SHWMS determined that the proposed Regulation 1305 should improve the regulation and increase the use of single stream recycling, particularly in the multi-family and commercial sectors. The current recycling commenced without the benefit of regulations, and SHWMS determined from its experience that proposed Regulation 1305 should increase the diversion of recyclable material from going to landfills commingled with other solid waste, and therefore should increase the amount of material that is recycled for sale in the marketplace. I agree with SHWMS's assessment that proposed Regulation 1305 improves recycling by identifying specific responsibilities for recycling by waste collection service providers, property managers and the commercial sector. Consequently, I recommend that the Department enter an Order that adopts proposed Regulation 1305 as a final regulation for the reasons and conclusion discussed below, which also address the public comments.

IV. REASONS AND CONCLUSIONS

Governor Markell signed the URL into law on June 8, 2010, and the URL delegated to the Department in *7 Del. C. §§6053-59* its administration to have single stream recycling available to the single family residential, multi-family residential and commercial sectors as its goal of universal recycling to meet the target recycling rates in the URL. The RPAC's most recent annual report dated November 2014 provided the following review of recycling:

> Despite the substantial progress Delaware has made over the last decade, we have not yet reached our 2015 goal of a

> 50% MSW diversion rate. There have been setbacks and hurdles including the closing of the Wilmington Organics Recycling Facility and a languishing global economy that have impeded our progress and additional measures will be necessary to ensure that we reach this goal. Delaware just reached its 2015 goal of 72% for Total Solid Waste diversion, **but there as well additional measures will likely be necessary to reach our 2020 goal.**
> Emphasis added.

The SHWMS determined that regulations would assist increasing the recycling rate to meet the 2020 goal, particularly regulations that specified the recycling responsibilities the commercial and the residential multi-family sectors. These sectors are difficult because of the use of recyclable containers that may be controlled by either those providing the waste collection services ("Haulers") or the owners or operators of the multi-family complexes or commercial entities, which proposed Regulation 1305 defines as "property managers."

The Department and the RPAC worked together on the proposed Regulation 1305, particularly insofar as it addresses the difficult task of improving recycling from the residential multi-family and commercial sectors.

Proposed Regulation 1305 defines "property manager" and 'commercial sector" to clarify the intent of the URL as it relates to multi-family residential and commercial entities. The definitions are reasonable and consistent with the URL's authority to provide universal recycling, which requires regulations over the persons involved in providing waste and recycling collection services to multi-family and commercial entities. The property managers are responsible for communicating with their tenants, and adopting and enforcing the community's rules and regulations, and hence have a vital role in the success of recycling in the complexes that they manage. Similarly, the definition

of "commercial sector" provides details on the types of entities subject to the URL's recycling requirements to avoid any possible confusion in the identity of a commercial entity.

The public comments primarily were from Haulers and they highlighted the problems with recycling at multi-family complexes and the commercial sector because of tenants contaminating recycling containers with non-recyclable waste. Proposed Regulation 1305 seeks to reduce the contamination by making it easier to recycle. The public comments from Haulers consider that providing more containers will lead to more contaminated containers. The SHWMS determined that more convenient recycling means the location of containers, their size, their signage, and their frequency of collection. The lack of convenient and appropriately marked recycling and trash containers is a reason users may commingle recyclables with non-recyclables. The Haulers are in the best position to reduce commingling by users through providing convenient containers, and notices and instructions to the users of their containers, including signage on the containers.

The public comments complain that Haulers should not inspect the contents of recycling containers before they are loaded onto their truck. The proposed Regulation 1305 prohibits the Haulers from commingling, but this addresses intentional commingling. Nevertheless, the proposed Regulation 1305 should encourage the Haulers to reduce commingling through convenient recycling and notice and any other measures that may reduce commingling of recyclables with waste. The record includes comments on surcharges imposed for commingled trash with recyclables, and this provides another option for the Haulers to charge its customers for contaminated recycling containers.

Thus, I find that proposed Regulation 1305 appropriately and reasonable places responsibility with Haulers to reduce commingling of recyclables with trash through convenient containers and notices and instructions.

The public comments seek to include more responsibility for property managers to encourage recycling by their tenants. The proposed Regulation 1305 properly and reasonably provides that property managers will notice their tenants on the proper use of the recycling containers. The URL and proposed Regulation 1305 require the minimum of annual notifications to tenants. If the minimum does not achieve effective recycling and commingling continues, then the property managers and the Haulers may have to provide more frequent notices than annual based on the specific circumstances of each multi-family complex or commercial entity. I agree that proposed Regulation 1305 properly assigns responsibilities for improved recycling in the multi-family and commercial sectors to the property managers and Haulers. Property managers and haulers are best able to control what goes in the recycling containers through the type, location and signage on the containers and property managers are able to control the conduct of those who use the containers by developing and enforcing community rules.

The public comments noted that the contractual relationship between Haulers and property managers and market competition often play a role in property managers changing Haulers, particularly if the Haulers charge more because of contaminated recycling containers. Proposed Regulation 1305 should end the shopping for Haulers who do not enforce the prohibition against commingling recyclables with non-recyclables. All Haulers will be subject to proposed Regulation 1305 and possible enforcement action for any commingling so that Haulers will not be able to ignore

recycling requirements and will face higher costs if they do. Thus, property managers will have a financial incentive to provide voluntary increased information to their residents, such as when a resident moves in and periodically thereafter more frequently than annually to increase recycling and reduce the higher cost imposed by Haulers.

The public comments questioned the proposed Regulation 1305's language on Haulers providing a specified ration of recycling to trash containers in multi-family complexes. The Department language relies on the URL's language, which requires that single stream recycling collection to multi-family residential complexes receive "an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complex's waste disposal containers." The proposed Regulation 1305 clarifies the URL by stating that Haulers should provide "single stream recyclables collection containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, so that recycling access is at least as convenient as waste disposal." The proposed Regulation 1305 is consistent with the Law's intent to increase recycling participation, which the Department considers can be done by making recycling just as convenient as waste disposal.

A person who wants to recycle should not have to walk to two different containers, one for solid waste and one for recyclables, when both can be conveniently located adjacent or reasonably near each other. The public comments raised a concern with locating recycling containers adjacent to solid waste container because they consider that such adjacent location will increase the commingling of recyclables with other solid waste. Department experts reasonably concluded that making residents carry recyclables

to one location and household waste to another location in a multi-family complex would make recycling more burdensome to residents and thereby increase commingling of recyclables with non-recyclables. The Haulers' comments that seek more and better information provided to encourage proper use of recycling containers is possible under proposed Regulation 1305, which the Haulers and the property manager, as noted above, to provide more frequent notice than the required annual notice. Indeed, such more frequent notice will allow increased recycling and reduce their liability for any commingling.

Determining what is a sufficient number of recycling containers is no different than determining a sufficient number of trash containers that Haulers now provide. If there is an insufficient number of containers, then commingling will increase and the Haulers and the property managers will need to take appropriate action to avoid the Department's enforcement. I conclude that proposed Regulation 1305 does not need to specify any specific ratio so long as the number of containers and the collection schedule prevent any overflowing or other problems that may result in a possible enforcement action.

As noted in the SHWMS TRM, the URL provides the Department with discretion to exempt multi-family complexes from compliance based upon the Department's approval of a written justification. *7 Del. C. §6053(b)(4)*. This procedure may satisfy some multi-family or commercial entities that have restricted space that prohibit the location of recycling containers.

I recommend the Department enter the following ordering paragraphs:

1. Pursuant to 7 *Del. C. Chapter 6010,* the Department has the statutory authority to adopt this Order approving the Final Regulations to promote recycling consistent with *7 Del. C. §§6051-59*;

2. The Department considered the record developed to support the Final Regulations, as established in the Report, and finds that it supports the adoption of the Final Regulations as a reasonable method to increase recycling to meet the goals set forth in 7 *Del. C. 6056*;

3. The Department provided proper public notices of the proposed regulations and of the public hearing, and the Department properly allowed the public the opportunity to comment on the proposed regulation beginning November 1, 2016 and ending December 9, 2016, including at a November 21, 2016 public hearing, in compliance with the public comment period required by the law;

4. The Report established the record for this decision and recommended adoption of the Final Regulations set forth in Appendix "A" hereto, which also provides additional reasons and findings supporting this Order;

5. The Final Regulations will: (1) encourage greater use of source separated recycling so that recyclable materials are not included with solid waste disposed in landfills or burned in incinerators; (2) specify that waste service providers and property managers shall provide at least annual notice to their customers and tenants of the availability of recycling at single or multi-family residential apartments and commercial entities; (3) regulate how property managers provide single stream recycling collection services; (3) implement improved recycling in a manner that does not unduly interfere with

small businesses, multi-family residential apartment complexes and commercial entities; and (4) to set forth the recycling reporting requirements for commercial sector entities;

6. The Department has reviewed the Final Regulations in the light of the *Regulatory Flexibility Act*, 29 *Del. C. Ch. 104*, and determines that they are lawful, feasible and desirable, and shall apply to all Delaware citizens equally;

7. The Final Regulations, as set forth in Appendix "A" hereto, are the same as published in the *Delaware Register of Regulations* and shall go into effect by operation of law not less than ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving the Final Regulations as *7 DE Admin. Code 1305*: *Universal Recycling Regulations*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and the Department's regulations require and as the Department determines is appropriate.

Robert P. Haynes, Esquire
Senior Hearing Officer

MEMORANDUM

TO:	Robert P. Haynes, Esq., Senior Hearing Officer, OTS
THRU:	Marjorie Crofts, Division Director, WHS TRH for MAC 1/11/17
FROM:	Nancy C. Marker, Environmental Program Administrator, SHWMS NCM 1/11/17 Bill Miller, Environmental Program Manager, SHWMS BM 1/11/17 Don Long, Planner, SHWMS DSL 1/11/17
DATE:	January 10, 2017
SUBJECT:	Memo to Hearing Officer on Public Hearing held November 21, 2016 regarding proposed regulation 1305 - Universal Recycling Regulations
REFERENCE:	See: P:\Universal.recycling.regulations\Transcript See: P:\Universal.recycling.regulations\Revised Proposed Regulation See: P:\Universal.recycling.regulations\additional comments

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The Solid and Hazardous Waste Management Section (SHWMS) is providing you with a response to comments on the proposed Universal Recycling Regulations made during the November 21, 2016 public hearing and during the comment period from November 1 - December 9, 2016. SHWMS recommends no changes at this time to the proposed regulations without further deliberation by the Department. I hope this information will assist you in reviewing the issues and making your recommendations to the Secretary of the Department of Natural Resources and Environmental Control. If you have any questions, feel free to call us at (302) 739-9403 (x8).

PURPOSE:

The purpose of the proposed Universal Recycling Regulations are to ensure: the proper programs and collection services for recyclable materials are implemented, maintained, and consistent with 7 *Del C.*Ch. 60 Subchapter III; the collected recycled materials are diverted from landfill disposal or incineration; the recyclable materials are otherwise properly processed and enter the marketplace; recycling in Delaware can be effectively measured; and that waste diversion is maximized through the reduction of solid waste deposited in our landfills. The proposed regulation seeks to ensure compliance with the law and to allow its recycling targets to be achieved. The SHWMS proposed setting forth the responsibilities of residential and commercial users, and the solid waste haulers.. Particularly related to commentary on multi-family residential settings, the SHWMS submits that the haulers should provide similar type of containers for recyclables as are provided for solid waste and that they should be located near the solid waste containers as much as reasonably possible to be consistent with the law and also to encourage maximum recycling to attain the law's goals.

RESPONSE:

SHWMS have reviewed the transcript of the public hearing and we have the following responses:

1) Mr. Ziegler: Comment about the hauler being held responsible for trash found in recycling containers placed there by customers.
   - 4.1.1
     SHWMS supports the language as written and in its intent to address the purposeful commingling of waste and recyclables by haulers. We have had multiple complaints from residents in regards to their waste hauler mixing waste and recycling in the same truck and SHWMS staff have conducted site visits to document some of these offenses and have issued NOVs and one Secretary's Order.We do not purpose any changes to the language in this provision. The language does not prohibit a hauler from disposing of, or not collecting, contaminated recyclables.

   Mr. Ziegler: Comment about the requirement of waste haulers to place recycling containers next to trash containers in multi-family complexes.
   - 4.1.3
     SHWMS agrees that additional attention should be given to multifamily complexes. The SHWMS will continue to evaluate these scenarios but does not put forth any changes to the proposed regulations at this time. The statute states the requirement for the waste hauler and recommends locating the recyclable collection container in the same proximity as the complexes waste disposal containers.

   7 *Del C.*Ch. 60 Subchapter III states in part: "*Effective no later than January 1, 2013, all persons providing solid waste collection services in the State shall provide:*

   a. *Single-stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complexes waste disposal containers….."*

2) Mr. Pilarski: Comment about the requirement of the waste hauler to provide a 1:1 ratio of waste to recycling dumpsters at multi-family complexes.
   - 4.1.3

   SHWMS: This provision does not have an explicit requirement for a 1:1 ratio of waste and recycling containers at multi-family complexes. However, pairing containers or placing them in the same proximity with trash containers is consistent with 7 *Del C.*Ch. 60 Subchapter III which states in part: "*Effective no later than January 1, 2013, all persons providing solid waste collection services in the State shall provide:*

   a. *Single-stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complexes waste disposal containers….."*

   It is also consistent with the intent of 7 *Del C.*Ch. 60 Subchapter III which emphasizes convenience and a system wherein recycling is maximized.

3) Mr. Anderson: Comments about contamination in recycling dumpsters at multi-family complexes and the lack of education provided by the property management to tenants.

SHWMS: SHWMS agrees that additional attention should be given to multifamily complexes. The SHWMS will continue to evaluate these scenarios but does not put forth any changes to the proposed regulations at this time.

RESPONSE to POST HEARING COMMENTS

1) Mr. Pilarski (12/7/16): seeks to clarify

- If a hauler provides a smaller container or even a toter[1] the way we read the draft, just as long as the hauler provides the container - is this correct?
- Were equal containers can't be accommodated, the law would allow us not to meet the 1:1 ratio – is this also accurate? What would we need to have on file or communicated to DNREC when this situation is in place?

SHWMS: No, a smaller container or even a toter is typically not acceptable.

Please see the statute 7 *Del.C.* §6053 (2) (a) http://delcode.delaware.gov/title7/c060/sc03/index.shtml that states:

Effective no later than January 1, 2013, all persons providing solid waste collection services in the State shall provide:

a. Single-stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complex's waste disposal containers.

The waste hauler would have to request an exemption. DNREC would conduct a site visit and inspection and make a determination. See: 7 *Del.C.* §6053 (4) (d). *Written justification to the Department for not providing multi-family recycling collection services where the physical constraints of the site prevent the placement of both trash and recycling containers. Exclusion from multi-family recycling is subject to Department review and approval.*

The intent of the proposed regulations is to clarify the responsibilities of all parties. We have documented multiple cases where recycling services were not adequate at multi-family complexes.

2) Mr. Pilarski (12/7/16):
For Commercial businesses (as an example) – It is ok to have a 6 yard MSW container and 4 yard recycling container (at the customer request)?

SHWMS: The onus falls on the commercial sector entity to: "*...actively participate in a comprehensive recycling program no later than January 1, 2014.*"
See § 6053 (4) Universal recycling: http://delcode.delaware.gov/title7/c060/sc03/index.shtml

[1] A wheeled cart with either 35, 64, or 95 gallon capacity

If the scenario described above meets the needs of the commercial entity and supports a comprehensive recycling program then it would be acceptable.

CONCLUSION:

SHWMS supports the adoption of the proposed Universal Recycling Regulations as stated in the attached final draft.

Appendix A
Recommended Final Regulations same as Proposed (Appendix A of Order if adopted)

TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE

1300 Waste Management Section

NOTE: New regulations as indicated with underlines

1305 Universal Recycling Regulations

1.0 Declaration of Intent

1.1 The purposes of these regulations are to ensure the following:

1.1.1 The proper collection services for recyclable materials are implemented, maintained, and consistent with 7 *Del C.*Ch. 60 Subchapter III.

1.1.2 Recyclables enter the marketplace.

1.1.3 Every residence has access to, and the commercial sector participates in, recycling programs that are both convenient and cost effective, through a comprehensive statewide system of resource recovery in which recycling is maximized and the necessary economies of scale are realized.

2.0 Scope and Applicability

2.1 Authority

2.1.1 These regulations are enacted pursuant to 7 *Del.C.* §6010(a). .

2.1.2 These regulations shall be known as "Universal Recycling Regulations."

2.2 Applicability

2.2.1 These regulations apply to:

2.2.1.1 All persons providing municipal solid waste collection services in the State of Delaware;

2.2.1.2 All persons engaged in the collection, aggregation, transportation, processing, or marketing of source-separated recyclable materials. This includes but is not limited to all contractors, subcontractors, and those who contract for service;

2.2.1.3 Commercial sector entities required by 7 *Del C.* §6053(4) to participate in comprehensive recycling; and

2.2.1.4 All property managers that are waste services providers in the single and multi-family residential and the commercial sectors.

2.3 These regulations exist in addition to Universal Recycling requirements and definitions specified in 7 *Del. C.* §§6051-6059.

3.0 Definitions

Notwithstanding any definitions in Chapter 60 or 64 of Title 7 or any other regulatory definitions found in the Delaware Regulations Governing Solid Waste to the contrary, the following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise.

"**Commercial sector**" means any for-profit or not-for-profit retail or wholesale stores, offices, food service establishments, hospitality, utility, warehouses, and other manufacturing, industrial or processing activities, and institutions such as social, charitable, educational, health care, professional and government services.

"Marketplace" means a person or persons that utilize the majority, if not all, of the recyclable materials it receives to produce a marketable product. Incinerators, landfills, and other methods of disposal are disqualified as an acceptable marketplace.

"**Property manager**" means the person or persons responsible for supervision, management or administration of the physical maintenance or the financial matters of real property. This includes but is not limited to the owner of the property.

"Waste services provider" means the person or persons engaged in providing solid waste collection service to the consumer. This applies to the persons or entities that arrange or contract for the service and the persons or entities that provide that service. 'The meaning shall be the same for **'Provider of waste service'**.

4.0 General Provisions

4.1 Waste services providers shall:

4.1.1 Not commingle source-separated recyclables with other solid waste;
4.1.2 At a minimum, provide annual notification to their customers that single stream recycling services will be provided, with instructions on participation; and[1]
4.1.3 Provide multi-family residential customers with single stream recyclables collection containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, so that recycling access is at least as convenient as waste disposal.

4.2 Property managers:

4.2.1 In the single or multi-family residential sectors shall ensure that single stream recycling services are available for tenants in accordance with 7 *Del.C.* §6053;
4.2.2 In the commercial sector shall ensure that single stream recycling services are available for tenants in a manner that is convenient and cost effective;
4.2.3 At a minimum, provide annual notification to their tenants that single stream recycling services will be provided with instructions on participation; and[1]
4.2.4 Are not precluded from requiring tenants to source-separate their single stream recyclable materials and place them in the appropriate recycling collection containers.

4.3 The commercial sector shall participate in a comprehensive recycling program. To accomplish this, all commercial sector persons shall:

4.3.1 Perform an annual review of the solid waste generated and maintain records of the review for three years;
4.3.2 Identify recyclables in the solid waste;
4.3.3 Subsequently keep recyclables separate from the solid waste stream; and
4.3.4 Ensure the recyclables enter the marketplace or are collected for recycling.

4.4 If a commercial sector entity has no recycling program or if they regularly have a significant portion of recyclables in their waste stream that are not source separated, they are not participating in a comprehensive recycling program and are subject to enforcement and penalties per Title 7 Chapter 60.

4.5 The exemption for persons who transport solid waste and recyclables from their own property as described in 7 *Del. C.* §6053(5) shall not include persons who act as a waste services provider to residences or tenants on their own property.

[1] In those instances where the property manager and the waste service provider are one and the same, only one annual notice shall be required.